

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of the )  
Commission's Forfeiture )  
Policy Statement and ) CI Docket No. 95-6  
Amendment of Section 1.80 )  
of the Rules to Incorporate )  
the Forfeiture Guidelines )

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: The Commission

COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), through its attorneys and pursuant to 47 C.F.R. § 1.415, hereby submits its comments in response to the Commission's Notice Of Proposed Rulemaking ("Notice"), CI Docket No. 95-6. In these Comments, PageNet recommends that the Commission establish forfeiture policies and guidelines that do not discriminate against paging carriers simply because paging carriers are licensed on a transmitter-by-transmitter basis, rather than a market area basis like many other Commercial Mobile Radio Service ("CMRS") carriers. In support of these Comments, the following is respectfully shown.

**I. Statement Of Interest**

PageNet is the largest paging company in the United States. PageNet provides paging service to over four (4) million units and continues to expand its existing paging systems while establishing new paging systems in new markets. PageNet is the licensee of hundreds of Private Carrier Paging ("PCP") systems and Radio Common Carrier ("RCC") paging systems. PageNet's experience as a common carrier and operator of numerous paging

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facilities nationwide demonstrates that PageNet is interested in the subject of the Notice and is eminently qualified to comment upon the proposals contained therein.

**II. Paging Carriers Should Not Be Subject To Forfeitures For Violations Of The Commission's Rules If The Same Violations Would Not Be Actionable Against CMRS Carriers That Are Licensed On A Market Area Basis**

As presently proposed, the Commission's forfeiture policies and guidelines do not take into account that traditional paging carriers are licensed on a transmitter-by-transmitter basis and, for this reason, are subject to forfeitures that would never be incurred by other CMRS carriers because such carriers are licensed on a market area basis. In establishing forfeiture policies and guidelines, the Commission must eliminate the discriminatory effect that is caused when like services are licensed in a different manner. Specifically, by way of example, the Commission should consider a situation in which an RCC paging carrier and a narrowband PCS paging carrier both erroneously construct their facilities at an antenna structure that is 500 feet from the structure proposed in the RCC paging carrier's Form 600 application and 500 feet from the antenna structure at which the narrowband PCS carrier had planned to place its facilities. The RCC paging carrier would be subject to a potential fine of \$20,000 per day under the proposed forfeiture guidelines. However, because the narrowband paging licensee does not have to license its system on a transmitter-by-transmitter basis like the RCC paging carrier, the narrowband carrier would not be subject to any forfeiture if the erroneous site was within the narrowband carrier's market area. For reasons of fairness and parity, in

establishing forfeiture policies and guidelines, the Commission must ensure that traditional paging carriers are not subject to different forfeiture liability than market area licensed CMRS carriers simply because the traditional paging carrier is licensed on a transmitter-by-transmitter basis.

The operation of the Commission's forfeiture policies and guidelines in the example above discriminate dramatically against the paging carrier because the paging carrier is licensed on a transmitter-by-transmitter basis. This discrimination must be eliminated because it is the result of the Commission's determination to license some CMRS carriers on a transmitter-by-transmitter basis and other CMRS carriers on a market area basis. Specifically, carriers that are licensed on a market area basis, such as narrowband PCS, broadband PCS, and cellular, are able to build as many transmitter sites as they wish without prior FCC approval for each transmitter site. Traditional paging carriers must become specifically authorized for each transmitter site and, once constructed, that site must conform to the specific parameters of the license. If the RCC paging carrier fails to construct each of its individually authorized transmitter sites in exact accordance with each construction authorization, the RCC paging carrier could be subject to a variety of costly forfeitures. For the carriers licensed on a market area basis, the construction of all sites inside their service area is permissive and, therefore, these market area licensed carriers will not be subject to forfeitures for failure to construct each

transmitter site in accordance with a site specific construction permit.<sup>1</sup>

The difference in potential forfeiture liability places market area licensed carriers at an overwhelming advantage over paging carriers that must license their operations on a transmitter-by-transmitter basis. To remove this harmful form of discrimination from the Commission's forfeiture policies and guidelines, the Commission must eliminate all forfeitures that a traditional paging carrier would be subject to, if such forfeitures would not be assessed against a carrier that was licensed on a market area basis. In addition, PageNet urges the Commission to adopt an underlying forfeiture policy that looks to whether there is a potential for actual or real harm, as opposed to hypothetical concerns, from the carrier's violation of operational rules and only assess forfeitures for violations of the Commission's technical and operational rules when an element of actual harm is present. By establishing forfeiture policies and guidelines that are non-discriminatory and reflect the principle that actual harm must be present before the Commission levies forfeitures for operational infractions, the Commission will be fulfilling its statutory mandate by establishing regulatory parity among CMRS carriers.

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<sup>1</sup> Carriers that are licensed on a market area basis, like paging carriers, must still comply with the operating parameters specified in their respective governing rule sections.

### **III. Paging Carriers Should Not Be Assessed Forfeitures At A Rate That Is Four Times Above The Forfeiture Rate Of Broadcast And Cable Operators**

If a broadcaster operates utilizing an unauthorized emission or operates on an unauthorized frequency, under the proposed forfeiture guidelines, the broadcaster is subject to a \$10,000 per day forfeiture, per violation. If a paging carrier were to operate utilizing an unauthorized emission and an unauthorized frequency, the paging carrier could be subject to a \$40,000 per day forfeiture, per violation. In addition, since the service area of a broadcaster is substantially greater than the coverage area of a single paging transmitter, the number of instances in which a paging carrier would be subject to forfeiture is much greater than that of a broadcaster. Specifically, for a paging carrier to provide service to a service area that equaled that of a broadcaster, a paging carrier may have to construct ten (10) or more transmitter sites and operate those sites on a wide-area basis. Therefore, since the paging carrier is subject to forfeitures at each site, if both the broadcaster and paging carrier were found operating their facilities with an unauthorized emission and an unauthorized frequency, the broadcaster could be subject to a \$20,000 (two (2) violations whose base forfeiture is \$10,000) forfeiture per day, and the paging carrier would be subject to \$800,000 (two (2) violations whose base forfeiture is \$40,000; times ten (10)

transmitter sites) forfeiture per day.<sup>2</sup>

To cure this inequity, the Commission should establish forfeiture guidelines whose base amounts: (1) reflect the nature of the service; and (2) are not based upon statutory maximums. Under Section 503 of the Communications Act of 1934, as amended, the maximum daily fine for broadcasters is \$25,000, while the maximum daily fine for paging carriers is \$100,000. As such, unless the Commission modifies the base forfeiture guideline amounts and no longer uses the statutory maximum as its foundation for forfeitures, paging carriers will always be potentially subject to forfeitures at a rate that is at least four times above the rate for broadcasters. This is outrageous in light of the fact that paging revenues are at the low-end of revenues, particularly on a service area basis, when compared to revenues of other FCC licensees. However, Section 503(b)(2)(D) of the Act provides the Commission with wide latitude in determining forfeiture amounts stating that the Commission may take into account the nature, circumstances, extent, and gravity of the violation, in addition to the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>3</sup> Therefore, PageNet recommends that the

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<sup>2</sup> It should be noted that a PCP licensee, which is presently subject to forfeitures whose base amounts are less than broadcasters, will be subject to forfeitures from base amounts that will be derived from the common carrier/CMRS category and will see substantial increases, e.g., from \$10,000 to \$100,000, as a result of their reclassification to CMRS. The Commission should make every effort to protect reclassified PCP carriers from this significant increase in potential forfeiture liability.

<sup>3</sup> 47 U.S.C. § 503(b)(2)(D).

Commission evaluate the potential for forfeiture liability for each service and, when there are significant and unjustifiable differences in the potential for liability between services, such as broadcast and paging, the Commission should adjust the forfeiture guidelines in order to achieve equity among the FCC licensees.

**IV. The Commission Should Establish Base Amount Guidelines For Case-By-Case Forfeiture Assessments**

In the Notice, the Commission sought comment on the advantages and disadvantages of adopting forfeiture guidelines in lieu of the traditional case-by-case evaluation of rule violations. PageNet supports the adoption of base amount forfeiture guidelines because such guidelines will enable licensees to evaluate potential liability when they discover and report rule violations to the Commission or are notified of rule violations by the Commission. In addition, the forfeiture guidelines will help ensure that the Commission is more consistent in assessing forfeitures against like carriers for like violations. Although forfeiture guidelines will be helpful for both the Commission and the licensee, PageNet also believes that each potential forfeiture situation should be evaluated on a case-by-case basis and all extenuating circumstances considered. Therefore, PageNet recommends that the Commission utilize forfeiture guidelines to establish base forfeiture amounts for specific violations. The forfeiture amount should be further considered by the case specific circumstances to determine whether the base forfeiture guideline amount should be increased

or deceased.

#### **V. Forfeiture Amounts And Adjustment Factors**

The Notice sought comment on whether the forfeiture amounts specified in the proposed forfeiture guidelines were too high. The forfeiture amounts identified for common carriers are extremely high and should be substantially reduced by establishing a maximum daily forfeiture amount for the most serious rule violations of \$10,000. It should be emphasized that the potential of a \$10,000 a day forfeiture is significant for all carriers and particularly paging carriers whose revenues per single transmitter coverage area is low when compared to the revenues of other FCC licensees. In addition, since there is always the possibility of license revocation, significantly lowering the base maximum daily forfeiture amount will not adversely impact the effectiveness and purpose of forfeitures.

The Commission should also retain the use of adjustment factors for all forfeiture assessment evaluations. Since rule violations are often the result of inadvertence, PageNet recommends that adjustment factors increasing the base forfeiture amount should only be utilized in circumstances in which the licensee or operator has knowingly violated the rule with an objective intent to violate the rule. Inadvertent rule violations should never be the subject of a forfeiture whose amount exceeds the base amount set forth in the forfeiture guidelines. By providing for adjustments and placing the emphasis of forfeitures that exceed the forfeiture guidelines on those circumstances in which licensees knowingly disregarded the



Commission's rules, the Commission correctly provides carriers with protection from severe penalties in those instances in which the carrier had no true intent to violate the Commission's rules.

#### **VI. The Commission Should Adopted Service Specific Forfeiture Guidelines**

In the Notice, the Commission sought comment on whether it would be beneficial to establish forfeiture guidelines on a service-by-service basis. PageNet supports creating forfeiture guidelines on a service-by-service basis because the forfeiture guideline categories (broadcast/cable, common carrier and other), are too broad and do not adequately anticipate that some common carriers are different in both size and service offerings, e.g., a facilities based international long distance carrier and a local paging carrier. However, for services that are similar, such as the services that comprise the CMRS, forfeiture guidelines established on a service-by-service basis must take into account that, from a forfeiture perspective, these services are only different in the way they are licensed. Therefore, forfeiture guidelines based on specific services, either CMRS as one service, or broken down into the services that comprise CMRS, must be adjusted to ensure that carriers licensed on a transmitter-by-transmitter basis are not subject to forfeitures, if such forfeitures could not be levied against market area licensed CMRS carriers.

#### **VII. Conclusion**

For paging carriers, the forfeiture guidelines proposed in the Notice are unfair because the guidelines do not apply in an equitable manner with respect to other CMRS carriers that are

licensed on a market area basis and, when compared to the potential maximum forfeitures for the same violations in other services such as broadcast, paging carriers are subject to significantly more potential liability. To cure these inequities, the Commission should individually evaluate each service that is subject to forfeitures and establish forfeiture guidelines that generally subject all carriers to the same liability for the same violations. Finally, the Commission should use the forfeiture guidelines as the starting point in any forfeiture evaluation, but also consider the individual circumstances of each matter and, where appropriate, utilize adjustment factors in its final forfeiture determination.

**WHEREFORE**, PageNet respectfully requests that the Commission consider and adopt its comments and proposals as enumerated herein.

Respectfully submitted,

**PAGING NETWORK, INC.**

By:



Judith St. Ledger-Roty  
Paul G. Madison  
**REED SMITH SHAW & MCCLAY**  
1200 18th Street, N.W.  
Washington, D.C. 20036  
(202) 457-6100

Its Attorneys

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